EMPLOYEE/MANAGEMENT RELATIONS

- **1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) policy regarding employees appointed under 38 U.S.C. 7405.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES: This Handbook contains VA policy on employee/management relations. These changes are made to include chiropractors to the list of occupations appointed under 38 U.S.C. 7401(1). They also incorporate technical amendments to properly reflect the Secretary's authority to issue regulations under 38 U.S.C. 7421. The pages in this transmittal replace the corresponding page number in Appendix A, Part I, II, III, IV, and V, VA Handbook 5021, dated April 15, 2002. These changes will be incorporated into the electronic version of the VA Handbook 5021 that is maintained on the Office of Human Resources Management Web site.
- **3. RESPONSIBLE OFFICE:** The Employee Relations and Performance Management Service (051), Office of Human Resources Management.
- **4. RELATED DIRECTIVE:** VA Directive 5021, Employee/Management Relations.

5. RESCISSIONS: None

CERTIFIED BY:

BY DIRECTION OF THE SECRETARY OF VETERANS AFFAIRS:

/s/Robert T. Howard Assistant Secretary for Information and Technology /s/Paul J. Hutter Executive in Charge of the Office of Human Resources and Administration

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CHAPTER 3. ADVERSE ACTIONS

1. ACTIONS COVERED. The provisions of this chapter apply to suspensions for more than 14 days, removals, reductions in grade or pay, furloughs of 30 days or less, or other actions which result in an involuntary separation or reduction in grade or pay when such actions are not based solely on unacceptable performance.

2. EMPLOYEES COVERED

- a. Among those employees covered by the provisions of this chapter are:
- (1) Employees in the competitive service who have completed a probationary or trial period for their current appointment;
- (2) Employees in the excepted service who are preference eligibles and who have completed 1 year of current continuous employment in the same or similar positions;
- (3) Employees in the excepted service (other than a preference eligible) who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; and,
- (4) Employees in the excepted service (other than a preference eligible) who have completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less.
- (5) Employees appointed under 38 U.S.C. 7401(3) (i.e., full-time permanent hybrids) or 7405(a)(1)(B) (i.e., part-time permanent hybrids or part-time or full-time temporary hybrids serving terms longer than one year) who have completed their probationary period.
- b. Most adverse actions will be initiated against employees who meet the criteria described in the previous subparagraph. However, 5 U.S.C. 7511 and 5 CFR 752.401 (c) provide a comprehensive list of all employees covered by the adverse action provisions of this chapter and should be consulted when questions arise concerning employee coverage.

3. EMPLOYEES EXCLUDED

- a. Physicians, dentists, nurses, nurse anesthetists, expanded function dental auxiliaries, physician assistants, podiatrists, [chiropractors,] optometrists, and other health care professionals appointed under 38 U.S.C. 74 (see part II of this handbook). **NOTE:** Employees appointed under 38 U.S.C. 7401(3) and hybrid employees appointed under 38 U.S.C. 7405(a)(1)(B), who are part-time and have completed their probationary period or who are part-time or full-time temporary and have completed more than one year of service on an appointment not limited to one year or less, are covered by this chapter.
 - b. Schedule C employees;
 - c. An individual appointed by the President; and,
 - d. Members of the Senior Executive Service (except as specifically covered by this chapter).

PART II. DISCIPLINARY PROCEDURES UNDER TITLE 38

CHAPTER 1. DISCIPLINARY AND MAJOR ADVERSE ACTIONS

1. SCOPE

a.	This part g	governs	disciplinar	y and	major	adverse	actions	based	on c	conduct	or po	erforma	ınce	in the	е
Depa	artment of V	Veterans	Affairs (V	⁷ A).											

- (1) The provisions of this chapter apply to VA employees holding a full-time, permanent appointment under 38 United States Code (U.S.C.) 7401(l) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included are:
 - (a) Physicians,
 - (b) Dentists,
 - (c) Podiatrists,
 - (d) [Chiropractors],
 - (e) [Optometrists],
 - (f) [Nurses],
 - (g) [Nurse anesthetists],
 - (h) [Physician assistants, and]
 - [(i) Expanded-function dental auxiliaries.]
- (2) Henceforth, "employee(s)" will be the term used to refer to the covered occupations in this chapter, unless otherwise specified.
 - (3) This part should be used in conjunction with VA Directive 5021.
- b. This chapter does not apply to employees appointed under 38 U.S.C., chapters 3, 71 or 78, or to employees appointed under 38 U.S.C. 7306, 38 U.S.C. 7401(3), 38 U.S.C. 7405, or 38 U.S.C. 7406.

2. AUTHORITY

- a. Section 203 of the Department of Veterans Affairs Health Care Personnel Act of 1991 Public Law (Pub. L. 102-40).
- b. [Section 302 of the Veterans Healthcare, Capital Asset and Business Improvement Act of 2003 (Pub. L. 108-170)].

- c. [38 U.S.C. 501(a), 38 U.S.C. 7421].
- d. [Title 38, U.S.C., chapter 74].

- e. [Section 3 of the Department of Veterans Affairs Health Care Personnel Act of 2004 Public Law (Pub. L.) 108-445].
 - f. [VA Standards of Conduct].
 - [g. Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635.]

3. POLICY

CHAPTER 1

- a. Employees are expected to maintain the highest standards of honesty, integrity, impartiality, conduct, and effectiveness. Whenever an employee's performance of duty or professional competence is determined to be unsatisfactory; or when an employee's professional or personal conduct is not satisfactory, prompt and appropriate, disciplinary or major adverse action, or other corrective action will be taken. The policy of VA is to maintain standards of conduct and efficiency which will promote the best interests of VA.
- b. Disciplinary or major adverse actions will be taken when it is evident that other supervisory techniques have failed to correct a given problem, or would be inappropriate. Actions taken should be consistent with the precept of like penalties for like offenses, with due consideration of any extenuating circumstances.
- c. Employees are entitled to be represented by an attorney or other representative of the employee's choice at all stages of the case. Employees must identify their chosen representative in writing. A representative who is employed by VA may be disallowed by the facility Director because of:
 - (1) Conflict of position, or
 - (2) Conflict of interest.
- d. Actions covered under this part are subject to the prohibited personnel practices listed in 5 U.S.C. 2302, prohibiting:
- (1) Discrimination because of race, color, religion, sex, national origin, age, disabling condition, marital status, or partisan political reasons; and
 - (2) Reprisal for the proper exercise of an employee's legal or administrative appeal rights.
- **4. DEFINITIONS.** Unless otherwise noted, the following definitions apply to this part only:
- a. **Admonishment.** An official letter of censure to an employee for minor act(s) of misconduct or deficiency in competence. This letter normally remains in the employee's personnel folder for 2 years.
- b. **Discharge.** The involuntary separation of an employee from employment based on conduct or performance.

CHAPTER 2. DELEGATIONS

1. SCOPE. This chapter contains the authorities as delegated by the Under Secretary for Health for proposing and deciding on disciplinary and major adverse actions. The Under Secretary for Health retains the authority to appoint individuals as members of the Disciplinary Appeals Board Panel.

2. AUTHORITY

- a. Title 38, U.S.C., chapter 74.
- b. 38 U.S.C. 7304 [, 38 U.S.C. 7421]
- c. VA Directive 5021.

3. RESPONSIBILITIES

- a. Delegations of Proposing and Decision Authorities for Disciplinary Actions (Admonishments and Reprimands).
 - (1) Field Employees
 - (a) Non-centralized positions:
 - <u>1</u>. Proposing Official: Immediate supervisor.
 - 2. Decision Official: Service Chief or equivalent or senior medical officer.
 - (b) Service Chiefs and equivalent positions below the level of Chief of Staff or senior medical officer:
 - 1. Proposing Official: Chief of Staff or senior medical officer.
 - 2. Decision Official: Facility Director.
 - (c) Chiefs of Staff or senior medical officer:
 - 1. Proposing Official: Facility Director.
 - 2. Deciding Official: Network Director.

NOTE: Facility directors may issue supplemental delegations of authority to propose and decide disciplinary actions involving employees in non-centralized positions under their jurisdiction. However, the authority to propose disciplinary action may not be delegated to an official at a lower level than the immediate supervisor, and the authority to decide disciplinary action may not be delegated to an official at a lower level than the service chief or equivalent or senior medical officer. Delegations must be in writing and may be issued as the Director deems appropriate. In exercising supplement delegation authority, directors must ensure that delegations are consistent with the statutory requirement that the decision official in a major adverse action must be at a higher level than the proposing official.

PART III. PROBATIONARY PERIOD ACTIONS

CHAPTER 1. TITLE 38 PROBATIONARY EMPLOYEES

1. **SCOPE.** This chapter contains the policy and procedures needed for taking actions against title 38 employees serving on a probationary period under 38 United States Code (U.S.C.) 7403(b) in the Department of Veterans Affairs (VA). This includes employees appointed under 38 U.S.C. 7401(1), i.e., physicians, dentists, podiatrists, [chiropractors,] optometrists, nurses, nurse anesthetists, physician assistants, and expanded-function dental auxiliaries. The Under Secretary for Health's designee refers to a designee in VA Central Office. This chapter does not apply to employees appointed under 38 U.S.C., chapter 3, 38 U.S.C. 7306, 38 U.S.C. 7401(3), 38 U.S.C. 7405 or 38 U.S.C. 7406.

2. RESPONSIBILITIES

- a. VA Central Office Assignments
- (1) **Authorizing Official.** Appropriate service director and equivalent positions or above
- (2) **Review Board.** Appropriate Central Office Professional Standards Board (PSB)
- b. Facility Director
- (1) **Authorizing Official.** Network Director
- (2) **Review Board.** Appropriate Central Office PSB
- c. Chief of Staff
- (1) **Authorizing Official.** Facility Director
- (2) **Review Board.** Appropriate Central Office Board
- d. Facility Employees, except Assistant/Associate Chiefs, Nursing Service
- (1) **Authorizing Official.** Appropriate Service Chief (or equivalent)
- (2) Review Board. Local PSB
- e. Assistant/Associate Chiefs, Nursing Service
- (1) Authorizing Official. Chief, Nursing Service
- (2) Review Board. VISN Nurse PSB

NOTE: For dentists and expanded-function dental auxiliaries, reviews will be conducted by the PSBs listed in VA Handbook 5005.

NOTE: If a facility director believes a local PSB meeting the requirements of this chapter cannot be properly constituted, the appropriate VISN board will be asked to complete the probationary review. If there are no VISN boards for the occupation, another facility director may be asked to establish a PSB for this purpose.

NOTE: For podiatrists, [] optometrists, [and chiropractors,] the appropriate service chief is the authorizing official; however, the review will be conducted by the VA Central Office Professional Standards Board.

- f. **Professional Standards Boards.** Professional Standards Boards will review the work records of each employee serving a probationary period in accordance with the provisions of this chapter. The establishment, membership and composition of Professional Standards Boards, as prescribed in VA Handbook 5005, part II, chapter 3, will be applicable to probationary reviews. Members from facilities other than the employee's may be designated to serve on the Board when it is determined to be appropriate or necessary.
- g. **Supervisors.** Supervisors will continually review the services of employees serving in a probationary status. Supervisors must assure by active measures that the work records of unsatisfactory employees or of those whose services are merely borderline are promptly referred to appropriate officials for action.
- h. **Chief, Human Resources Management, or Designee.** The Chief, Human Resources Management, or designee, is responsible for:
 - (1) Assisting management officials with probationary procedures.
- (2) Reviewing proposed probationary actions for conformance with Department and VHA policies and procedures.
 - (3) Advising employees about probationary procedures and rights.
- (4) Serving as technical advisor to Boards. This includes advising Board members on policies and procedures related to conducting probationary reviews.
- (5) Ensuring that copies of permanent records relating to periodic and summary reviews are included in the Health Care Provider Credentialing and Privileging Records of personnel with clinical privileges.

3. SUMMARY BOARD REVIEWS

a. **Purpose.** Summary reviews are limited to situations where summary separation from Federal service may be justified. Officials identified in paragraph 2a-2e [] are responsible for deciding whether to conduct a summary review of an employee's services. Supervisors may initiate requests for summary reviews at any time during the probationary period.

- (3) **Facility Directors.** The Board Action and all related documents will be forwarded to the Under Secretary for Health for review. The Under Secretary for Health shall, in consultation with appropriate VHA officials, comment on the Board recommendation and send these comments, the Board Action, and related documents through the Deputy Assistant Secretary for Human Resources Management to the Secretary for action. The Secretary may accept, reject, or modify the recommendation.
- (4) VA Central Office Employees. The Board Action and all related documents will be forwarded through channels to the Office of Management Support (10A2). The Office of Management Support will forward the recommendation to the Under Secretary for Health who may approve, disapprove, or modify the recommendation.
- (5) **Separations Requiring VHA Approval/Review.** All field facility recommendations for separation during probation requiring VHA summary review or approval (e.g., actions related to facility directors and requests for summary reviews for podiatrists[,] optometrists[, chiropractors]) are to be sent through the appropriate Network (10N/051). The material forwarded will include the Director's recommendation (where appropriate) and any other applicable comments; VA Form 10-2543, Board Action, (in duplicate); one copy of all related documents, including one copy of all Proficiency Reports prepared during the probationary period; and the employee's personnel folder.
- i. **Action by Approving Authority.** The designated official will indicate final approval or disapproval of a Board finding or recommendation for retention by completing items 14, 15, and 16, except at VHA facilities in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota, where recommendations of Summary Review Boards are approved by the Board and so noted on the board action form. If the recommendation made by the Board is modified by the designated official, the Board's recommendation will be disapproved, with the annotation that a memorandum regarding the modification is attached.

j. Effecting Approved Recommendations

- (1) **Separation.** Separations under these procedures must be effected before completion of the probationary period. The employee will normally be given 15 calendar days notice, but the notice period may be shortened if necessary to effect the separation before completion of the probationary period.
- (2) **Retention.** The employee will be notified if retention in VHA has been approved. A recommendation for retention does not preclude subsequent initiation of a summary review prior to completion of the probationary period.
- k. Reporting Separated Licensed Appointees to State Licensing/Registration Boards or License Monitoring Entities. Approving officials are responsible for determining whether to report an individual who is separated as a result of the review, or resigns, or retires prior to the completion of the review process, to appropriate licensing/registration boards or license monitoring entities. In making such determinations, approving officials are responsible for ensuring adherence to the required procedures and time standards for VA-initiated reporting, prescribed in VHA Handbook 1100.19.

CHAPTER 3. TITLE 38 GRIEVANCES

1. SCOPE AND AUTHORITY

a. **General.** This chapter governs employee grievances under the VA grievance procedure.

b. Employee Coverage

- (1) This chapter applies to all permanent and probationary physicians, dentists, podiatrists, [chiropractors,] optometrists, nurses, nurse anesthetists, physician assistants, and expanded-function dental auxiliaries.
- (2) A bargaining unit employee may elect to use the VA grievance procedure described in this chapter or the negotiated grievance procedure, but not both, in the case of a disciplinary or adverse action covered under part II of this handbook which does not involve a question of professional conduct or competence.
- c. **Disciplinary and Adverse Actions Covered.** Disciplinary and adverse actions[,] other than title 38 [] adverse actions which involve questions of professional conduct or competence, are covered by the grievance procedures described in this chapter.

2. REFERENCES

- a. Section 203 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Pub. L. 102-40).
- b. Section 302 of the Veterans Healthcare, Capital Asset and Business Improvement Act of 2003 (Pub. L. 108-170).
- c. Section 3 of the Department of Veterans Affairs Health Care Personnel Act of 2005, (P.L. 108-445).
 - d. 38 U.S.C. 501(a), 512(a), 7421, 38 U.S.C. 7461-7464.

3. OFFICIALS AUTHORIZED TO SETTLE GRIEVANCES

- a. **Informal Grievance Procedure.** The official who will make a decision on grievances filed at the informal stage will be the immediate supervisor, or lowest level official with authority to settle the issue.
- b. **Formal Grievance Procedure.** Authority to make a decision when the formal stage of the grievance procedure is reached will be exercised as follows:
- (1) **Grievances of Facility Employees.** The facility Director will be the decision official on a grievance from an employee under the facility Director's jurisdiction provided the matter to be resolved is one which is under the Director's authority. In grievances where one of the exceptions identified in subparagraph (3) of this paragraph exist, the grievance will be decided by the next higher level official with the authority to resolve the issue.

PART V. TITLE 38 APPEALS TO THE DISCIPLINARY APPEALS BOARD

CHAPTER 1. GENERAL

- 1. SCOPE, AUTHORITY AND DEFINITIONS. This chapter applies to Department of Veterans Affairs (VA) employees holding a full-time, permanent appointment under 38 U.S.C. 7401(l) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included in this category are: physicians, dentists, podiatrists, [chiropractors,] optometrists, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. These categories of individuals are included in the term "employee(s)" as used in this chapter unless otherwise specified. This chapter governs appeals of major adverse actions which arise out of, or which include, a question of professional conduct or competence in VA. Major adverse actions are suspensions (including indefinite suspensions), transfers, reductions in grade, reductions in basic pay, and discharges. A question of professional conduct or competence involves direct patient care and/or clinical competence. The term clinical competence includes issues of professional judgment.
- **2. REPRESENTATION.** An employee of the Department may be designated by the decision official to represent management in any case before a Disciplinary Appeals Board. The decision official should direct requests for legal representation to the General Counsel or Regional Counsel, as appropriate.

3. FILING AN APPEAL TO THE DISCIPLINARY APPEALS BOARD

- a. **Initiating an Appeal.** An employee subjected to a major adverse action which is based in whole or in part on a question of professional conduct or competence, may file a written notice of appeal to the Disciplinary Appeals Board under the provisions of this part. The employee may request a hearing before the Board. Any such request must be submitted in writing and accompany the employee's notice of appeal. The appeal must contain (1) the appellant's name, address, telephone number, designation of representative (if any), (2) a copy of the notice of action proposed and decision letter, (3) a statement as to whether the employee is requesting a hearing before the Board, (4) why the appellant believes the major adverse action taken was in error or should not have been taken, and (5) a statement describing the expected relief. The original appeal and the request for hearing, if any, must be submitted to the Under Secretary for Health or designee, through the Office of Human Resources Management (051), so as to be received within 30 days after the date of service of the written decision on the employee. Submission of the appeal must be by personal service, facsimile, or certified mail return receipt requested. A copy of the appeal must be served on the decision official who took the action being appealed and any management representative of record at the time of filing.
- b. **Establishing Timeliness of an Appeal.** For purposes of computing the 30-day period for filing an appeal, the date of service of the written decision on the employee will be determined by the date of receipt by the employee of the personal delivery, the signed receipt of certified mail, or presumed to be 5 days after depositing the decision in the U.S. mail if no acknowledged receipt is available. The Deputy Under Secretary for Health for Operations and Management will make a final decision regarding the determination that an appeal is filed untimely. The employee will be notified in writing, by letter, of this final determination. There are no further administrative appeal rights regarding the issue of timeliness.